Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Grande Communications, Inc.	)	
	)	
Petition for Declaratory Ruling Regarding Self-Certification of IP-Originated VoIP Traffic	)	WC Docket No. 05-283

OPPOSITION OF CENTURYTEL, INC.

On behalf of its operating subsidiaries, CenturyTel, Inc. ("CenturyTel") hereby opposes the Petition for Declaratory Ruling ("Petition") submitted by Grande Communications, Inc. ("Grande") in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Grande's Petition is the latest in a line of pleadings seeking to avoid compensation duties for use of critical network infrastructure.[2] In particular, Grande seeks an exemption from access charges for all voice traffic that a customer "self-certifies" originated using Internet protocol ("IP") technology, under the flawed assumption that all IP

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1 Petition for Declaratory Ruling of Grande Communications, Inc., WC Docket No. 05-283 (filed Oct. 3, 2005) ("Grande Petition").

2 *See, e.g.*, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97 (rel. Apr. 21, 2004) ("*AT&T IP Order*"); *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, FCC 04-27 (rel. Feb. 19, 2004) ("*Pulver VOIP Order*"); *Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, FCC 05-41 (rel. Feb. 23, 2005) ("*AT&T Calling Card Order*"); Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266 (filed Dec. 23, 2003) (withdrawn).

communications that terminate on the public switched telephone network ("PSTN") are "enhanced services."[3]

None of the IP-telephony cases on which the Commission has ruled thus far have hinged on protocol conversion, as Grande seeks here. In each case, the Commission used reasoned decision-making to look at many aspects of the particular service to determine appropriate treatment.[4] Commission precedent demonstrates that whether a call is IP-originated, or even whether there is a "net" protocol conversion, is not determinative of its classification as a telecommunications or information service.

Commission precedent also demonstrates that all carriers that use the PSTN in similar ways should be subject to similar inter-carrier compensation duties, as well as universal service contribution obligations. When telecommunications traffic is transmitted over the PSTN, the terminating local exchange carrier ("LEC") should be compensated whether the traffic is circuit-switched or packet-switched. Especially in rural areas, LECs rely heavily on access charge revenues to invest in, and maintain, networks capable of supporting advanced telecommunications services. Grant of the Grande Petition therefore would harm the majority of consumers, who continue to rely on the PSTN for plain old telephone services ("POTS") as well as Internet access via digital subscriber line ("DSL") services.

Grande also is incorrect that the exemption from access charges applicable to the connection between an enhanced services provider ("ESP") and its customers would apply to Grande's termination of VOIP calls to third-party end-users. The ESP exemption applies only to

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3 Grande Petition at 1.

4 *See AT&T IP Order* at ¶ 1 (indicating lack of net protocol conversion was just one of three factors that led the Commission to find that AT&T's offering was not an enhanced service); *Pulver VOIP Order* at ¶¶ 9-14 (finding that the pulver's computer-to-computer VOIP service was an information service even through there was no net protocol conversion); *see generally AT&T Calling Card Order*.

the connection between the ESP and its subscriber. Grande's passing of voice traffic over the PSTN to a LEC should be subject to terminating access charges. The proposal that LECs rely on "self-certification" would invite gaming and be administratively unworkable. Therefore, CenturyTel urges the Commission to deny the Grande Petition.

II. PROTOCOL CONVERSION, IN ITSELF, DOES NOT CONVERT TELECOMMUNICATIONS TO AN INFORMATION SERVICE

The obligation of interexchange telecommunications service providers to pay access charges does not depend on the technology they employ to provide their services.[5] Grande incorrectly presumes that IP-originated calls that traverse the PSTN are always classified as enhanced services (or information services).[6] However, there is no exemption from access charges based solely on a protocol conversion necessary for the interconnection of IP-based and circuit-switched networks.

The Commission long has recognized that certain categories of protocol conversion – including "net" protocol conversion – should be treated as basic telecommunications services, *not* enhanced services:

> These categories include protocol processing: (1) involving communications between an end-user and the network itself (e.g., for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing [customer premises equipment ("CPE")); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end-user).[7]

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5 47 C.F.R. § 69.5(6).

6 Grande Petition at 7 (stating that traffic is enhanced "by definition . . . because it undergoes a net protocol conversion").

7 See *AT&T IP Order* at n.13 (citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-

In its Petition, Grande has identified a protocol conversion necessary only for the introduction of a new basic network technology (the second category of services listed above), which does not change the nature of a basic service to an enhanced service.[8]

The telecommunications industry is transitioning from circuit-switched to IP-based networks, and it is inevitable that there will be a protocol conversion when the two technologies communicate. This protocol conversion is precisely the type of "internal" protocol conversion that the Commission held would occur when, in the 1980s, the telephone industry transitioned from analog to digital loops.[9] Today, telecommunications providers offering IP-based services interconnected with the PSTN perform a protocol conversion much the same as the "digital protocol interface" described by the Commission two decades ago. Just as digital-to-analog calls qualify as telecommunications services, so do IP-to-PSTN calls.

149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 106 (1996) ("*Non-Accounting Safeguards Order*").

8 *AT&T IP Order* at n.13 (stating that no net protocol processing occurred in the first and third categories identified in the *Computer Inquiries* as basic services, thus implying that category 2 includes net protocol processing).

9 *Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Memorandum Opinion, Order, and Statement of Principles, 95 FCC 2d 584, ¶ 16 (1983) ("[T]here is currently a trend towards the use of digital loops which will interface with customer premises equipment using a digital protocol interface. A potential problem might arise if a call were placed between a user of equipment which employs such a digital interface and a user using the more traditional analog interface (with appropriate conversion equipment employed within the network): there would be a net protocol conversion within the network for such a call to proceed, *i.e.*, from a digital to an analog protocol between the ends of that call. This could be thought of as invoking the definition of enhanced service, *although the service itself would remain a switched message service otherwise unchanged except for the characteristics of the electrical interface*." [emphasis in original]); *see also Non-Accounting Safeguards Order* at ¶ 106.

III. ALL TELECOMMUNICATIONS TRAFFIC THAT USES THE PSTN SHOULD BE SUBJECT TO SIMILAR COMPENSATION OBLIGATIONS

The Commission has not held that phone-to-phone IP services are categorically exempt from access charges.[10] In fact, Grande's Petition raises the very issues now under consideration in the Commission's *IP-Enabled Services* and *Intercarrier Compensation* proceedings, and Grande has failed to demonstrate a compelling reason for the Commission to preempt those proceedings to grant Grande's Petition.

Specifically, in the *IP-Enabled Services NPRM*, the Commission found that:

> As a policy matter . . . any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether traffic originates on the PSTN, on an IP network, or on a cable network.[11]

Chairman Martin echoed this finding in his separate statement to the *NPRM*, saying, "[F]unctionally equivalent services should be subject to similar obligations and that the cost of the PSTN should be born equitably among those that use it in similar ways."[12]

Grande fails to explain why its services use the ILEC's facilities differently from other telecommunications services. As such, access charges must continue to apply to interexchange traffic. In the *AT&T IP Order*, the Commission found:

> AT&T obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, AT&T's specific service imposes the same burdens on the local exchange as do circuit-switched interexchange calls. It is reasonable that AT&T pay the same interstate access charges as other interexchange carriers for the same termination of calls over the

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[10] *AT&T IP Order* at n.67.

[11] *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28, ¶ 33 (rel. Mar. 10, 2004) ("*IP-Enabled Services NPRM*").

[12] *See IP-Enabled Services NPRM*, Statement of Commissioner Kevin J. Martin.

> PSTN, pending resolution of these issues in the *Intercarrier Compensation* and *IP-Enabled Services* rulemaking proceedings.[13]

The Commission further held that use of the Internet as a transmission medium is irrelevant to whether a carrier's services should be subject to interstate access charges.[14] Specifically, the Commission rejected the notion that, "using the Internet, as opposed to a private IP network or some other type of network, is at all relevant to our analysis of whether [a carrier's] specific service should be assessed interstate access charges."[15] The Commission has not granted any of the past piecemeal petitions to avoid compensation obligations for interconnected VOIP traffic, and it should not do so here. Interstate interexchange telecommunications traffic is subject to compensation obligations, such as interstate access charges and universal service contributions, regardless of technology used, unless and until the Commission holds otherwise and replaces access with a new mechanism designed to compensate LECs for the use of their networks.

It serves the public interest to require all service providers that terminate interexchange traffic to the PSTN pay access charges and universal service, because they benefit from access to the network infrastructure supported by those compensation obligations. First, a substantial portion of IP-enabled services customers connect to their ISPs over LEC-provided facilities. These VOIP customers rely on a robust PSTN to originate calls. Second, a great deal of the value in VOIP services lies in their ability to reach end-users that do *not* use IP-based services. Without the ability to interconnect with the PSTN, and reach all PSTN-connected customers, VOIP would remain a niche service within a small community of users rather than the growing service that it is today.

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13 *AT&T IP Order* at ¶ 15.

14 *Id.* ¶ 17.

15 *Id.*

IV. THE ESP EXEMPTION APPLIES TO COMMUNICATIONS BETWEEN THE ESP AND ITS SUBSCRIBER, NOT BETWEEN THE ESP AND A THIRD PARTY

The ESP exemption does not apply to the service Grande describes (terminating calls to end-users that are not the ESP's customers). When the Commission adopted the ESP exemption, it contemplated end-users originating calls over the PSTN to reach their ESP.[16] In other words, the Commission granted the ESP an exemption for termination necessary for the ESP's customer to access the information service. The ESP exemption does *not* contemplate the ESPs then carrying the call to an unrelated third party via the PSTN without paying applicable access charges on the PSTN side of the call.[17]

Grande is asking for "enhanced service" classification for transmitting an interexchange voice communication to an end-user on the PSTN using standard CPE, with a telephone number from the North American Numbering Plan, and with no perceived protocol change.[18] Grande is providing interexchange telecommunications between the ESP's customer and the called party and should pay terminating access charges. None of the "enhanced functionality" that may be available to the originating caller is available to the called party. Thus, Grande's termination of the call to the PSTN should be subject to terminating access charges.

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[16] *See*, *e.g.*, *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶ 343 (1997) (describing the rationale for exempting ISPs from paying access charges" to receive calls from their customers.").

[17] *Id.* ¶ 345 (finding persuasive that it did not appear that "ISPs use the public switched network in a manner analogous to IXCs;" an interconnected VOIP provider, however, uses the PSTN in precisely the same manner as an IXC).

[18] *See AT&T IP Order* at ¶ 1.

V. "SELF CERTIFICATION" WILL ENCOURAGE ARBITRAGE

Carriers that are required to pay access charges[19] should continue to do so until the Commission finds otherwise,[20] not the other way around, as Grande implies. Grande's proposal to permit customers to "self-certify" as to the IP-based nature of their traffic presents considerable enforcement challenges, and would invite bypass.[21] As an initial matter, and as noted above, receipt of self certification of IP-origination would in no way ensure that the IP traffic is an information service upon review of all facts and circumstances. Moreover, the proposed self-certification of originating traffic would add one more avenue for arbitrage to a system that already is rife with schemes to disguise traffic and to shift costs to others. Such arbitrage is a major impetus for the Commission's comprehensive efforts to reform inter-carrier compensation. Finally, it is unclear whether reliance on self-certification on a customer-by-customer basis (potentially resulting in thousands of certifications) even would be administratively feasible. The Commission, thus, should view Grande's proposal for self-certification with great skepticism.

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19 *See* 47 C.F.R. § 69.5.

20 *AT&T IP Order* at ¶ 15.

21 *See* Midsize Carrier Coalition, Proposed Rules for Proper Identification and Routing of Telecommunications Traffic, Docket No. 01-92, at 2 (filed Dec. 5, 2005) (discussing the problem known as "phantom traffic," whereby carriers mislabel traffic to avoid access charges).

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the Grande Petition for Declaratory Ruling.

Respectfully submitted,

CENTURYTEL, INC.

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